



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

February 4, 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Johnson:

On November 24, 2014, the Government Accountability Office (GAO) released a report entitled *FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education*, GAO-15-108. The GAO Report examined available information regarding the application of usage-based pricing by Internet service providers, issues related to usage-based pricing that selected consumers reported as being important to them, and the potential effects of usage-based pricing on consumers. The Report recommends that the FCC: (1) work with fixed providers to develop a voluntary code of conduct, similar to the Wireless Code of Conduct, to improve consumer communication and understanding of data use and pricing and (2) make use of existing data collection sources to track fixed Internet usage-based pricing and its effect on consumers nationwide so that the FCC can take actions, if necessary, to protect consumer interests. I agree that usage-based pricing is an important consumer issue and one that the FCC must ensure does not reduce Americans' access to broadband services.

The Commission recognizes the potential significance of data caps and other usage-based pricing for consumers of fixed broadband services. In contrast to mobile wireless services, for which data caps and other usage-based pricing are relatively common, fixed wireline broadband services historically have not been subject to caps on data usage. We know, however, that some providers of fixed services have begun to impose data caps. The Commission is evaluating these developments in several ongoing proceedings. For example, in the recently adopted *2015 Broadband Progress Report and Notice of Inquiry*, the Commission identifies the potential for usage allowances, among other factors, to affect future determinations of whether "advanced telecommunications capability" is available to all Americans. The Commission determines to examine these issues, among other factors, in its next Broadband Progress Report.

Usage-based limits also are an important factor in determining services that are eligible for support under the FCC's Connect America Fund program. The Wireline Competition Bureau has established an initial minimum usage limit of 100 GB per month for price cap carriers that set any usage allowance for service offerings they rely upon to meet their obligations associated with their acceptance of Connect America Phase II model-based support.<sup>28</sup> The Bureau also requires price cap carriers accepting Phase II support to offer a minimum usage allowance over

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<sup>28</sup> See *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15066 (Wireline Comp. Bur. 2013).

the course of the Connect America Phase II's term (now set at six years) that remains consistent with trends in usage for 80 percent of consumers using cable or fiber-based fixed broadband services.<sup>29</sup> In short, we are very cognizant of the critical impact that consumers' data usage has on the quality of their experience in accessing the Internet.

Additionally, in its *2014 Open Internet Notice of Proposed Rulemaking*, the Commission requested comment on a variety of issues relating to this topic.<sup>30</sup> In particular, the Commission asked for comment "on what economic tools broadband providers utilize to manage traffic on their networks,"<sup>31</sup> and noted that "[b]roadband providers may address traffic management through commercial terms and conditions on end users, such as pricing for different levels of throughput or through the use of 'data caps.'"<sup>32</sup> The Commission also asked "[t]o what extent and in what ways do broadband providers use such tools to manage traffic, such as by excluding certain content from such an end user data cap?"<sup>33</sup> In response to these questions, some commenters raised usage-based pricing for both mobile and fixed services as one of many issues of potential concern,<sup>34</sup> while others supported such practices as effective means of managing network capacity.<sup>35</sup>

On February 5th, I will circulate to my fellow Commissioners for their consideration a draft Report and Order adopting new Open Internet protections. The rules that I intend to propose will provide the FCC with the tools necessary to protect a fast, fair, and open Internet. In addition to rules governing the conduct of broadband providers, I will propose enhancements to the existing transparency rule. That rule, which empowers consumers to make informed choices about broadband services, already requires broadband providers to disclose the commercial terms of a consumer's broadband service, including any data caps or allowances. Because it provides a basis for enforcement where appropriate, the existing transparency rule provides us with an even more effective tool than a voluntary code of conduct would. I am confident that the transparency rule – as it exists already today and as I hope it will be enhanced moving forward – will help to ensure that consumers are protected from harmful practices.

In addition to the foregoing, the Commission is currently monitoring usage-based pricing of fixed services through our review of consumer complaints. To date, a relatively small proportion of the overall complaints have focused on issues pertaining to data caps or other forms of usage-based pricing of fixed services. But we are continuing to monitor consumer

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<sup>29</sup> *Id.* at 15068.

<sup>30</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) (*2014 Open Internet Notice of Proposed Rulemaking*).

<sup>31</sup> *Id.* at 5577.

<sup>32</sup> *Id.*

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<sup>34</sup> See, e.g., Comments of Public Knowledge *et al.*, GN Docket 14-28, at 48-60 (filed July 15, 2014) <http://apps.fcc.gov/ecfs/document/view?id=7521480282>; Comment of Gail Day (filed July 17, 2014) <http://apps.fcc.gov/ecfs/comment/view?id=6018184486>.

<sup>35</sup> See, e.g., Comments of Int'l Center for Law and Economics and TechFreedom, GN Docket 14-28, at 19 (filed July 17, 2014) <http://apps.fcc.gov/ecfs/document/view?id=7521706121>.



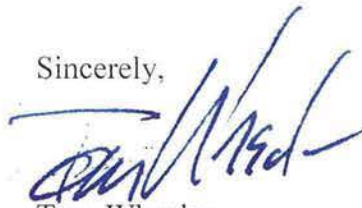
complaints carefully for any changes that would suggest that additional action is needed. In this regard, the Commission's Consumer and Governmental Affairs Bureau is streamlining the process of synthesizing and analyzing consumer complaint trends and will make more of that data readily accessible to the public. We will use this enhanced capability to monitor customer complaints closely, to identify any problems associated with the use of data caps and other usage-based pricing measures, and to take action where appropriate.

We believe these current and future measures offer benefits that go beyond what a voluntary code of conduct would accomplish and that it is therefore not necessary to take that step at this time.

At the same time, we will use the information currently available, as well as explore the collection of additional data resources, to help ensure the Commission is well positioned to take additional action to protect consumers, should that prove necessary. As recommended in the GAO Report, we will evaluate the information we collect in the Commission's Urban Rates Survey and on the Form 481 to enhance our understanding of what usage-based pricing practices are used in the market for fixed services. These data collections were developed to support the Commission's Universal Service Fund's High-Cost program and do not offer information on whether consumers subscribe to plans that have usage limits, on consumers' usage relative to the limits, or on the effect of usage-based pricing on consumers' bills. In addition, and as discussed above, we will ensure that our consumer complaint system carefully catalogs and tracks any complaints that come in, including those that may result from the additional rules I have proposed that my colleagues adopt in the Open Internet proceeding. We will also look at additional data sources to help evaluate this issue and others affecting consumers' ability to access broadband services.<sup>36</sup>

We appreciate GAO's analysis and recommendations and its concern for the protection of consumers as we work to reduce barriers and promote competition in the market for broadband services. Should you have any questions or comments regarding this matter, I would be pleased to discuss them with you.

Sincerely,



Tom Wheeler

cc: The Honorable Anna Eshoo

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<sup>36</sup> The Commission has previously sought comment on whether to augment its Form 477 data collection to include price and customer satisfaction, along with other factors, and these issues remain open for the Commission's consideration. See *Modernizing the FCC Form 477 Data Program et al.*, WC Docket No. 11-10 et al., Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2011); Report and Order, 28 FCC Rcd 9887, 9892, para. 13 n.29 (2013).



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

February 4, 2015

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Cummings:

On November 24, 2014, the Government Accountability Office (GAO) released a report entitled *FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education*, GAO-15-108. The GAO Report examined available information regarding the application of usage-based pricing by Internet service providers, issues related to usage-based pricing that selected consumers reported as being important to them, and the potential effects of usage-based pricing on consumers. The Report recommends that the FCC: (1) work with fixed providers to develop a voluntary code of conduct, similar to the Wireless Code of Conduct, to improve consumer communication and understanding of data use and pricing and (2) make use of existing data collection sources to track fixed Internet usage-based pricing and its effect on consumers nationwide so that the FCC can take actions, if necessary, to protect consumer interests. I agree that usage-based pricing is an important consumer issue and one that the FCC must ensure does not reduce Americans' access to broadband services.

The Commission recognizes the potential significance of data caps and other usage-based pricing for consumers of fixed broadband services. In contrast to mobile wireless services, for which data caps and other usage-based pricing are relatively common, fixed wireline broadband services historically have not been subject to caps on data usage. We know, however, that some providers of fixed services have begun to impose data caps. The Commission is evaluating these developments in several ongoing proceedings. For example, in the recently adopted *2015 Broadband Progress Report and Notice of Inquiry*, the Commission identifies the potential for usage allowances, among other factors, to affect future determinations of whether "advanced telecommunications capability" is available to all Americans. The Commission determines to examine these issues, among other factors, in its next Broadband Progress Report.

Usage-based limits also are an important factor in determining services that are eligible for support under the FCC's Connect America Fund program. The Wireline Competition Bureau has established an initial minimum usage limit of 100 GB per month for price cap carriers that set any usage allowance for service offerings they rely upon to meet their obligations associated with their acceptance of Connect America Phase II model-based support.<sup>10</sup> The Bureau also requires price cap carriers accepting Phase II support to offer a minimum usage allowance over

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the course of the Connect America Phase II's term (now set at six years) that remains consistent with trends in usage for 80 percent of consumers using cable or fiber-based fixed broadband services.<sup>11</sup> In short, we are very cognizant of the critical impact that consumers' data usage has on the quality of their experience in accessing the Internet.

Additionally, in its *2014 Open Internet Notice of Proposed Rulemaking*, the Commission requested comment on a variety of issues relating to this topic.<sup>12</sup> In particular, the Commission asked for comment "on what economic tools broadband providers utilize to manage traffic on their networks,"<sup>13</sup> and noted that "[b]roadband providers may address traffic management through commercial terms and conditions on end users, such as pricing for different levels of throughput or through the use of 'data caps.'"<sup>14</sup> The Commission also asked "[t]o what extent and in what ways do broadband providers use such tools to manage traffic, such as by excluding certain content from such an end user data cap?"<sup>15</sup> In response to these questions, some commenters raised usage-based pricing for both mobile and fixed services as one of many issues of potential concern,<sup>16</sup> while others supported such practices as effective means of managing network capacity.<sup>17</sup>

On February 5th, I will circulate to my fellow Commissioners for their consideration a draft Report and Order adopting new Open Internet protections. The rules that I intend to propose will provide the FCC with the tools necessary to protect a fast, fair, and open Internet. In addition to rules governing the conduct of broadband providers, I will propose enhancements to the existing transparency rule. That rule, which empowers consumers to make informed choices about broadband services, already requires broadband providers to disclose the commercial terms of a consumer's broadband service, including any data caps or allowances. Because it provides a basis for enforcement where appropriate, the existing transparency rule provides us with an even more effective tool than a voluntary code of conduct would. I am confident that the transparency rule – as it exists already today and as I hope it will be enhanced moving forward – will help to ensure that consumers are protected from harmful practices.

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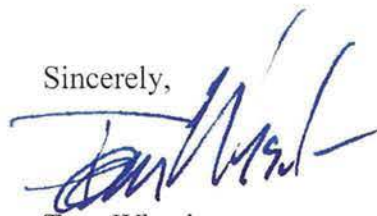
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At the same time, we will use the information currently available, as well as explore the collection of additional data resources, to help ensure the Commission is well positioned to take additional action to protect consumers, should that prove necessary. As recommended in the GAO Report, we will evaluate the information we collect in the Commission's Urban Rates Survey and on the Form 481 to enhance our understanding of what usage-based pricing practices are used in the market for fixed services. These data collections were developed to support the Commission's Universal Service Fund's High-Cost program and do not offer information on whether consumers subscribe to plans that have usage limits, on consumers' usage relative to the limits, or on the effect of usage-based pricing on consumers' bills. In addition, and as discussed above, we will ensure that our consumer complaint system carefully catalogs and tracks any complaints that come in, including those that may result from the additional rules I have proposed that my colleagues adopt in the Open Internet proceeding. We will also look at additional data sources to help evaluate this issue and others affecting consumers' ability to access broadband services.<sup>18</sup>

We appreciate GAO's analysis and recommendations and its concern for the protection of consumers as we work to reduce barriers and promote competition in the market for broadband services. Should you have any questions or comments regarding this matter, I would be pleased to discuss them with you.

Sincerely,



Tom Wheeler

cc: The Honorable Anna Eshoo

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<sup>18</sup> The Commission has previously sought comment on whether to augment its Form 477 data collection to include price and customer satisfaction, along with other factors, and these issues remain open for the Commission's consideration. See *Modernizing the FCC Form 477 Data Program et al.*, WC Docket No. 11-10 et al., Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2011); Report and Order, 28 FCC Rcd 9887, 9892, para. 13 n.29 (2013).





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February 4, 2015

The Honorable Darrell Issa  
Chairman  
Committee on Homeland Security and Governmental Affairs  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Issa:

On November 24, 2014, the Government Accountability Office (GAO) released a report entitled *FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education*, GAO-15-108. The GAO Report examined available information regarding the application of usage-based pricing by Internet service providers, issues related to usage-based pricing that selected consumers reported as being important to them, and the potential effects of usage-based pricing on consumers. The Report recommends that the FCC: (1) work with fixed providers to develop a voluntary code of conduct, similar to the Wireless Code of Conduct, to improve consumer communication and understanding of data use and pricing and (2) make use of existing data collection sources to track fixed Internet usage-based pricing and its effect on consumers nationwide so that the FCC can take actions, if necessary, to protect consumer interests. I agree that usage-based pricing is an important consumer issue and one that the FCC must ensure does not reduce Americans' access to broadband services.

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Usage-based limits also are an important factor in determining services that are eligible for support under the FCC's Connect America Fund program. The Wireline Competition Bureau has established an initial minimum usage limit of 100 GB per month for price cap carriers that set any usage allowance for service offerings they rely upon to meet their obligations associated with their acceptance of Connect America Phase II model-based support.<sup>19</sup> The Bureau also requires price cap carriers accepting Phase II support to offer a minimum usage allowance over

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the course of the Connect America Phase II's term (now set at six years) that remains consistent with trends in usage for 80 percent of consumers using cable or fiber-based fixed broadband services.<sup>20</sup> In short, we are very cognizant of the critical impact that consumers' data usage has on the quality of their experience in accessing the Internet.

Additionally, in its *2014 Open Internet Notice of Proposed Rulemaking*, the Commission requested comment on a variety of issues relating to this topic.<sup>21</sup> In particular, the Commission asked for comment "on what economic tools broadband providers utilize to manage traffic on their networks,"<sup>22</sup> and noted that "[b]roadband providers may address traffic management through commercial terms and conditions on end users, such as pricing for different levels of throughput or through the use of 'data caps.'"<sup>23</sup> The Commission also asked "[t]o what extent and in what ways do broadband providers use such tools to manage traffic, such as by excluding certain content from such an end user data cap?"<sup>24</sup> In response to these questions, some commenters raised usage-based pricing for both mobile and fixed services as one of many issues of potential concern,<sup>25</sup> while others supported such practices as effective means of managing network capacity.<sup>26</sup>

On February 5th, I will circulate to my fellow Commissioners for their consideration a draft Report and Order adopting new Open Internet protections. The rules that I intend to propose will provide the FCC with the tools necessary to protect a fast, fair, and open Internet. In addition to rules governing the conduct of broadband providers, I will propose enhancements to the existing transparency rule. That rule, which empowers consumers to make informed choices about broadband services, already requires broadband providers to disclose the commercial terms of a consumer's broadband service, including any data caps or allowances. Because it provides a basis for enforcement where appropriate, the existing transparency rule provides us with an even more effective tool than a voluntary code of conduct would. I am confident that the transparency rule – as it exists already today and as I hope it will be enhanced moving forward – will help to ensure that consumers are protected from harmful practices.

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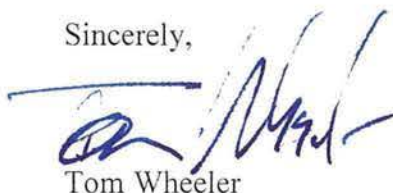
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We appreciate GAO's analysis and recommendations and its concern for the protection of consumers as we work to reduce barriers and promote competition in the market for broadband services. Should you have any questions or comments regarding this matter, I would be pleased to discuss them with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", is written over a horizontal line.

Tom Wheeler

cc: The Honorable Anna Eshoo

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February 4, 2015

The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Carper:

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Sincerely,



Tom Wheeler

cc: The Honorable Anna Eshoo

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<sup>9</sup> The Commission has previously sought comment on whether to augment its Form 477 data collection to include price and customer satisfaction, along with other factors, and these issues remain open for the Commission's consideration. See *Modernizing the FCC Form 477 Data Program et al.*, WC Docket No. 11-10 et al., Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2011); Report and Order, 28 FCC Rcd 9887, 9892, para. 13 n.29 (2013).